



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 12, 1998

Mr. Sim Goodall  
Police Legal Advisor  
City of Arlington Police Department  
620 W. Division Street  
Arlington, Texas 76004-1065

OR98-1915

Dear Mr. Goodall:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117197.

The Arlington Police Department (the "department") received a request for various information relating to the requestor's client. You state that certain information has been released. However, you claim that the remaining documents are excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted investigative file.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

You received the request for information on April 28, 1998. You did not seek a decision from this office until May 21, 1998. Consequently, you have not met your statutory

burden. Gov't Code 552.301. The requested information is therefore presumed public. You have, however, demonstrated that the Tarrant County District Attorney's office has a compelling interest in the requested information. Thus, we will examine which documents you must withhold.

Initially, we note that some of the submitted records appear to have been filed with a court. Documents filed with a court are generally considered public. *See Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992); Attorney General Opinion DM-166 (1992). Therefore, you must make these documents available to the requestor.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

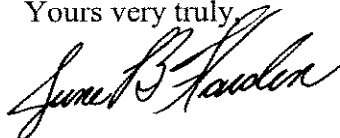
To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). We also note that section 552.103(b) provides that "[f]or purposes of this section, the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court." You indicate, and the submitted documents confirm, that the requestor is currently representing his client in his application for writ of habeas corpus. After reviewing the submitted material, we find that litigation is pending. We also conclude that the documents you have submitted relate to the litigation, and may be withheld.

In so ruling, we assume that none of the information in the records at issue has previously been made available to the criminal defendant or his prior attorneys during the

course of the criminal prosecution. Generally, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent the defendant or his attorneys have seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a).<sup>1</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref.: ID# 117197

Enclosures: Submitted documents

cc: Mr. Bill Loveless  
419 S. Carroll, Suite 2A  
Denton, Texas 76201  
(w/o enclosures)

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<sup>1</sup>As we resolve this matter under section 552.103, we need not address your additional argument against disclosure. We caution, however, that some of the information may be confidential by law. Therefore, if the department receives a request in the future, at a time when litigation is no longer reasonably anticipated or pending, the department should seek a ruling from this office on the other exceptions raised before releasing any of the requested information. See Gov't Code § 552.352 (distribution of confidential information may constitute criminal offense).